IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

APPEAL FROM ORDER NO.865 OF 2004

Sundaram Plastics and Stationery).. Appellant

Versus

Municipal Corporation of Greater Mumbai)).. Respondent

Mr.N.B.Shah with Mr.Piyush Shah for the Appellant.

Mr.J.Xavier for the Respondent.

CORAM: SMT.NISHITA MHATRE, J.

DATED: 4TH OCTOBER 2004

P.C.:

. This Appeal From Order has been filed against an order dated 20th September 2004 passed by the City Civil Court in Notice of Motion No.3796 of 2004 in Long Cause Suit No.4188 of 2004 for injunction. The order challenged in the Suit is passed by the Mumbai Municipal Corporation, Respondent No.1 herein, under Section 53(6)(b) of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as "the MRTP Act"). As submitted by Mr.Xavier for the Respondent an appeal lies under the MRTP Act to the State Government. No suit is maintainable to challenge the orders passed under this Act as stipulated in Section 149. According to Mr.Shah, learned Advocate for the Appellant, since the very jurisdiction to issue such a notice has been challenged by the Appellant by filing a suit for specific relief, no

appeal would lie.

2. In my view, the Appeal can decide the question of jurisdiction as well and, therefore, this Appeal From Order is not maintainable. Leaving this remedy open to the Appellant, the Appeal From Order is dismissed. However, the Respondent Corporation shall not take any action in furtherance of the impugned notice for a period of four weeks from today. Mr.Shah undertakes to withdraw the Suit filed in the City Civil Court before filing the Appeal.

3. In view the dismissal of the Appeal From Order, nothing survives in Civil Application No.1175 of 2004 and the same is disposed of accordingly.